United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

77-1175

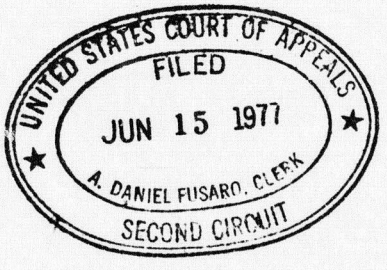
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET NO. 77-1175

UNITED STATES OF AMERICA

-v-

FRANCOIS CHIAPPE

REPLY BRIEF FOR APPELLANT CHIAPPE



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Point I*

Respondent characterizes the continued restraint of appellant Chiappe in a strait-jacket and blindfold as "nonsense." It should be reiterated that the classification of this conduct as physical abuse was not dreamed up by counsel, but was recognized as such by the American Law Institute in their Restatement of Foreign Relations Law, cited in the main brief.

Additionally, the so-called expulsion decree was illegal on its face since it bore a different identification number, did not provide for an appeal, and did not provide for choice of country to be expelled to. It is assumed that this Court is not so naive as to believe that appellant would have chosen to be expelled to the country from which he had successfully fought extradition.

Point II

Again, we must reiterate that not only was there no connection between the cash and the crime charged, but there was actual proof of its legitimacy. One of the documents obtained by appellant from the Argentine Court records clearly shows that the money returned to Mrs. Chiappe was in fact returned to her because she had proved to the Federal Judge's satisfaction that it was legitimately hers. This was known to (or should have been known to) the prosecutor.

Moreover, it is appellant's claim that it was error for Chief Judge Mishler to admit Mrs. Chiappe's statement to the jury as a question of law. The question of "agency" or "authorization" as concerns the statement was a preliminary question of law for the Court on the question of admissibility, not merely an argument as to the weight to be given to the evidence.

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* References are made to the points in Respondent's brief.

Of course, the error was compounded by the information contained in the newly received documents from Argentina. The fact that the money was returned to Mrs. Chiappe as being legitimately hers was not before the jury for its consideration.

Point V

The respondent claims that this argument by appellant is a bold assertion without support in the record. The Court is respectfully referred to the Grand Jury minutes and the reports dated January 20, 1973 and March 19, 1973 (Govt. exhibits 3500-4&5). It is further clear that Nicoli never mentioned the February 1968 transaction until sometime in 1974. Moreover, the reports referred to are not, "vague and inconclusive" but rather highly detailed reports covering months of debriefings, running well over 100 pages in totality.

Clearly the Grand Jury munutes on their face show an on-going conspiracy, but this was by design in that the Grand Jury presentation did not reveal the truth, that the conspiracy involving appellant ended in December of 1967, not within the period of the statute of limitation.

Point VI

Again, the respondent in his brief chooses to argue the meaning of the various Court documents. The main thrust of the material discovered is not only the date of arrest, but the documented torture of appellant, denied by Borsalino. Not only would this fact be a consideration for the Jury as to credibility and motive to lie, but may well have led to the exclusion of all the evidence seized in the 1968 arrest as the product of torture.

The lack of due diligence claim is also specious. The prosecutor in his affidavit admits that he only saw the file in October of 1976 during his

visit to Buenos Aires with appellant's trial counsel. Clearly, the nature of the evidence introduced by the Government as a result of its search of the Argentine Court file was not known to appellant's counsel until some 2 weeks before the Trial. The Court must remember that Buenos Aires is many thousands of miles away, not easily accessible at short notice and without considerable expense.

As soon as the evidence was sought to be introduced at the hearing, diligent efforts were made to obtain the records. The fruits of these efforts were amply laid out in the motions for a new trial.

Respondent's suggestion (p. 40) that Judge Mishler gave trial counsel time to fly down to Argentina is a gross misrepresentation of the records. In fact, Judge Mishler, with much annoyance and sarcasm, told trial counsel, "Imagine if you wanted the rest of the week to fly down to Argentina, I'd give it to you." This misrepresentation also flies in the face of the fact that Judge Mishler also requested to see the file (see cites in main brief).

For the respondent to argue the meaning and possible use to counsel, the Court, and the Jury of the suppressed documents is truly unproductive, indeed counterproductive.

DATED: NEW YORK, NY
JUNE 15, 1977

Respectfully submitted,

JURIS G. CEDERBAUMS

E OF NEW YORK, COUNTY OF New York ss.:

RIS G. CEDERBAUMS being duly sworn, deposes and says: deponent is not a party to the action,
r 18 years of age and resides at 30 Broad St N.Y.C. 10004

Affidavit of Service By Mail — On June 15 1977 deponent served the within Reply Brief upon David Trager, United States Attorney Eastern District of N.Y. attorney(s) for U.S. in this action, at 225 Cadman Plaza East, Brooklyn, N.Y. 11201 & Assoc Deputy Chief Appeals the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit of Personal Service — On 19 at
deponent served the within upon
the
herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.

to before me on 17th day of June 1977
Eric J. Weiss
ERIC J. WEISS
Notary Public, State of New York
No. 41-4626119
Qualified In Queens County
Commission Expires March 30, 1978

Juris G. Cederbaums
The name signed must be printed beneath
JURIS G. CEDERBAUMS